court quite properly considered the case as not within the statute. A tenant, to recover for improvements, need not prove a contract enforceable in equity, however, when such an understanding as there is in the instant case is acted upon. *King's Heirs v. Thompson* (1835) 34 U. S. 204; *Bourne v. Odam* (1895) 17 Ky. L. Rep. 696, 32 S. W. 398. The case comes down, then, to a question of fact as to the reasonableness of the plaintiff's supposition that he was to have the future enjoyment of the land, and there is to be found the basis of the dissenting opinion.

MANDAMUS—ISSUANCE OF DIPLOMA—SCHOOLS AND SCHOOL DISTRICTS—CONTRACTS.—The plaintiff attended the defendant high school for four years, passed in all her courses and in her final examinations, and delivered her graduation oration. The defendant secured caps and gowns, had them fumigated, and ordered all the girls to wear them at the graduation exercises. All refused to wear the caps, and all but three refused to wear the gowns, on account of the unbearable smell from the fumigation. But the verbal order to wear them was not rescinded, and only those three were given diplomas. The plaintiff sued for a writ of *mandamus* to compel the defendant to issue a diploma to her. *Held,* that she was entitled to the relief sought. *Valentine v. Independent School District* (1919, Iowa) 174 N. W. 334.

The court proceeded on the ground that the order of the defendant was arbitrary, unreasonable, and exceeded its authority. In view of the fact that the plaintiff had complied with all rules and conditions to entitle her to graduate, except the one in question, there was no fair occasion for the further exercise of discretion by the board. So the ministerial duty remaining—to issue the diploma—was enforceable by *mandamus.* There is little conflict in the authorities as to this use of the writ, and nearly all of them are fully discussed in the opinion. However, this case raises the interesting question of the exact legal relations between a student and his school. As a rule, the sum of these relations is a unilateral contract. See Corbin, *Offer and Acceptance* (1916) 26 YALE LAW JOURNAL, 169. The first step in the formation of the contract—the offer—seems to be made in the ordinary case when the student, after satisfying all entrance requirements, presents himself with his credentials and his cash deposit (if required). A public school is then, by statute, under a duty to receive him, while a private school is not; but this duty, like that of an innkeeper or common carrier on the custom of the realm, lies entirely outside the contract, and does not make the formation of the latter different in the two cases. The school, by allowing the student-offeror at this time to matriculate, accepts his offer, and undertakes certain duties defined by its advertisements, its catalogues and its rules and regulations. It seems that this acceptance covers the whole period necessary to complete the course, since the school cannot raise that student's tuition during that time. *Cf. Niedermeyer v. University of Missouri* (1895) 61 Mo. App. 654. The school's duties are, *inter alia,* to furnish instruction for the advertised period, to provide board and lodging in a proper case, to provide an opportunity to take the final examinations, and to issue a diploma. These duties are conditional, much like the duties of the company on a life insurance contract; unless the student shall obey the rules of the institution, obtain the necessary passing mark, and make the necessary tuition payments, the school has the privilege of dropping him. *State v. Orange Training School* (1899, Sup. Ct.) 63 N. J. L. 528, 42 Atl. 846. And he has no right to recover his deposit or tuition paid in advance. *Fessman v. Seeley* (1895, Tex. Civ. App.) 30 S. W. 268. The student has his corresponding rights, and may secure reinstatement by *mandamus* if he has fulfilled all conditions. *Baltimore University v. Colton* (1904) 98 Md. 623, 57 Atl. 14. In one instance, however, cited in the principal case, a writ of *mandamus* was denied in these

circumstances on the ground that there was an adequate remedy in damages for breach of the contract or in a bill for specific performance of it. *State v. Milwaukee Medical College* (1906) 128 Wis. 7, 106 N. W. 116. But no case has been found giving either kind of relief. Even after completing the whole course satisfactorily and passing his final examinations, a student may relieve the school of its duty to give him a diploma by a flagrant violation of school discipline. *People v. New York Law School* (1893, Sup. Ct.) 68 Hun, 118, 22 N. Y. Supp. 663. But he retains even then a right to a certificate showing what he has accomplished. After a student has passed the final examinations and it is in the discretion of the faculty to grant him a diploma, they are under a duty to exercise that discretion; and if all questions of discretion are settled in his favor, then the school must issue the diploma. *State v. Lincoln Medical College* (1908) 81 Neb. 533, 116 N. W. 294.

MANDAMUS—STATUTES—FINANCIAL INABILITY TO PERFORM.—By the decisions of the courts of Florida, railroads are under an absolute duty to provide and maintain an adequate and safe roadbed and track. The defendant having been ordered by the State Railroad Commissioners to make proper repairs, refused to do so. The Commissioners instituted *mandamus* proceedings to enforce the order, and the defendant pleaded its complete financial inability. *Held,* that neither an alternative nor a peremptory writ should be granted. *State ex rel. Burr v. Tavares and Gulf R. R.* (1919, Fla.) 82 So. 833.

Mandamus is the ordinary procedure to compel public service corporations to perform the express and implied duties imposed on them by their charters or by statutes. See *In re Wheeler* (1909, Sup. Ct.) 62 Misc. Rep. 37, 50, 115 N. Y. Supp. 605, 613. The duty must be clear and specific. See *Public Service Comsion v. Interborough Rapid Transit Co.* (1916) 172 App. Div. 324, 329, 158 N. Y. Supp. 480, .484. Where the acts to be done under the order would be of a continuing nature, what seems the best opinion holds that the writ will not issue, since it would partake too much of the character of an injunction. *Ibid.* This procedure has been used to compel street railway companies to pave the street between their rails, to compel the operation of adequate and convenient trains, to compel the construction of safe crossings and to compel adoption of rates fixed by state commissions. See 24 L. R. A. 564, note. It seems to be well settled that the existence of other remedies does not prevent the issuing of the writ, if it appears they are not equally adequate, convenient, and complete. *State v. Lake Erie & Western R. R.* (1897, C. C. D. Ind.) 83 Fed. 284; *State v. Chicago, Madison & Northern R. R.* (1891) 79 Wis. 259, 48 N. W. 243. It is generally an adequate defence in *mandamus* proceedings that the writ would be futile and inoperative; and financial inability, when it is as complete as in the instant case, clearly is within the rule. *Ohio & Mississippi Ry. v. People* (1887) 120 Ill. 200, 11 N. E. 347; *State v. Dodge City, Montezuma & Trinidad Ry.* (1894) 53 Kan. 329, 36 Pac. 755; see also 2 Bailey, *Habeas Corpus* (1913) 1139. It has been suggested that *mandamus* might issue at least when the defendant wilfully and, perhaps, fraudulently placed itself in difficulties. That view has some support particularly when the situation developed after the original issuing of the writ. *Silverthorne v. Warren R. R.* (1868) 33 N. J. L., 173; *Public Service Commission v. International Ry.* (1919, Sup. Ct.) 106 Misc. Rep. 364, 174 N. Y. Supp. 708. It is hard to see, however, how the defendant's fraud makes the writ any more enforceable. Perhaps, as suggested in a Georgia case (sometimes erroneously cited as contrary to the doctrine of the principal case), the financial inability will be received as a valid defence to contempt proceedings for failure to comply with the writ. *Savannah & Ogeechee Canal Co. v. Shuman* (1893) 91 Ga. 400, 17 S. E. 937.